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IN THE
Supreme Court of the United States
October Term, 1964

No. 491

CORLISS LAMONT, doing business as
BASIC PAMPHLETS,

Appellant,

v.

THE POSTMASTER GENERAL OF THE
UNITED STATES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**APPELLANT'S MEMORANDUM CONCERNING
CHANGED CIRCUMSTANCES**

LEONARD B. BOUDIN,
VICTOR RABINOWITZ,
Attorneys for Appellant,
30 East 42d Street,
New York, N. Y. 10017.

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The Solicitor General, in a Memorandum Concerning Changed Circumstances, has advised the Court that the Postmaster General has directed a change in the procedures for enforcement of the statute (39 U. S. C., § 4008) whose constitutionality is at issue in this case. Since the statute is attacked as unconstitutional both on its face and as applied (R. 3) and since the procedures which the Postmaster General had adopted to enforce the statute are, at most, a subsidiary issue in the case, the action by the Postmaster General does not significantly affect the issues before this Court. It does, however, as the Solicitor General concedes, deprive the appellee of its defense of mootness, i.e., it is conceded that under the new conditions there is a justiciable issue before this Court.

Nevertheless appellee suggests that this Court may remand this case (and the companion case of *Fixa v. Heil-*

berg, No. 848, this Term) to the District Court for further consideration in the light of the new procedures. In support of this suggestion appellee refers to *Fortson v. Toombs*, No. 300 this Term and *Calhoun v. Latimer*, 377 U. S. 263. But in both of those cases a remand was ordered because a change in circumstances may have rendered the cause moot. Here the contrary is true. The change in circumstances makes it clear that the cause is *not* moot.

A remand will mean further briefing in the District Court (although the case was adequately briefed the first time); further consideration by that court, a further appeal to this Court, whatever the result below, and further briefing in this Court. All of the energy and expense thus incurred must be multiplied by two since there are two separate cases involved in these appeals. We can see no result at all from such procedure except further delay, further expense and totally unnecessary work for the District Courts involved and for this Court, as well as for counsel.

The change in circumstances does not even require changes in appellant's brief to this Court. Only Point I B considers the constitutional aspects of the listing procedure which has now been abandoned. The rest of the brief (except Point VI which was devoted to mootness) is as applicable to the changed conditions as it was to the old. If any consideration of the changes in procedures is needed, it can be had through appellee's brief and a reply brief. The case is not set for argument until the week of April 26.

The statute which is here attacked as a serious interference with First Amendment rights, was passed in 1962. This action has been pending since August 13, 1963. It must be conceded that the question of constitutionality is a substantial one. See District Court opinion in *Heilberg v. Fica*, D. C. N. D. Cal. No. 41660, Nov. 16, 1964. We recognize that some delay in the determination of such issues is necessary because of the requirements of orderly

judicial process. Such delay, however, is undesirable and ought not to be permitted to continue any longer than is absolutely necessary.

A remand here can only result in the continued abuse of the rights of American citizens for another eight to twelve months. There is nothing in the situation before the Court requiring any postponement of presentation of this case to the Court.

Respectfully submitted,

LEONARD B. BOUDIN,
VICTOR RABINOWITZ,
Attorneys for Appellant,
30 East 42d Street,
New York, N. Y. 10017.

March 8, 1965.